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TAGS: [ECON](#) [ETRD](#) [KIPR](#) [KCRM](#) [RS](#) [WTO](#)

SUBJECT: IPR: RUSSIA ACCREDITS ROYALTIES COLLECTING SOCIETY
FOR PERFORMERS AND PHONOGRAM PRODUCERS

REF: A. 08 MOSCOW 155

[B.](#) 08 MOSCOW 2901

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[¶](#)1. (C) Summary: On August 6, the Russian Federal Service for Supervision of Law Observance in Cultural Heritage Protection (ROK) granted All-Russia Organization for Intellectual Property (VOIS) accreditation as Russia's sole royalty collecting society in both the performer and phonogram producer categories. As a result, the collecting society supported by the International Federation of the Phonographic Industry (IFPI), can no longer operate in Russia. IFPI's local representative contends that this selection is the result of corruption and close ties between VOIS' governing board and Prime Minister Putin. IFPI envisions obstacles for its member companies in receiving royalties because legal entities cannot become members of VOIS. ROK stated that its primary objective was to select a collecting society that would represent individual artists as well as rightsholders. Post plans to meet with ROK, and will continue to follow up with IFPI on possible options for rightsholders who are not individuals to work within the new system. End Summary.

Russia now has one collecting society...

[¶](#)2. (U) On August 6, the Russian Federal Service for Supervision of Law Observance in Cultural Heritage Protection, aka RosOkhranKultura (ROK), granted All-Russia Organization for Intellectual Property (VOIS, by its Russian initials) accreditation as Russia's sole royalty collecting society in both the performer and phonogram producer categories (ROK Orders numb.136 and 137). This decision followed the recommendation of ROK's committee on collecting societies, which held hearings on July 31 and August 4. VOIS will now operate as Russia's sole royalty collecting society for the next five years. After the initial five year term, unless ROK has issue with VOIS' operations, accreditation will be prolonged for another ten years.

[¶](#)3. (U) This accreditation is the final step in Russia's restructuring of royalty collection, which began with the implementation of the Civil Code Part IV in 2008. The process was the result of an effort to meet international IPR norms for standardization and transparency in the collection process. The committee failed to accredit any society in December 2008 and launched a new tender in April 2009. In the final hearing, the committee considered three societies: A) Equal-Rights Phonographic Alliance (RFA), supported by the International Federation of Phonographic Industries (IFPI); B) VOIS, supported by the Russian Authors, Society (RAO); and C) Russian Society for Performers, Rights Management (RUOPI).

14. (SBU) During the hearings the committee questioned each society with regard to their membership, representation, size and accuracy of catalogs. (Note: Catalog refers to the number of songs for which royalties are collected. End note)

The committee's principal concern with RFA was that its "governing body is representative and protective mainly (of the) interests of recording companies and (the) music industry" over the interests of individuals. The committee questioned VOIS on its legal structure, which only allows for the representation of artists (persons) and not companies or legal entities, an quasi-legal contract with the Russian Railroads (to play music on trains), and its inaccurate reporting of its catalog (actually 600 versus the 2,500 originally reported). RUOPI's catalog was significantly smaller than those of the other contenders and was not seriously considered.

...But not everyone is happy

15. (SBU) IFPI, which represents most U.S. record labels, preferred RFA over VOIS in the tender. IFPI's principal concern was that VOIS, according to Russian law, can only represent individuals and not legal entities, and therefore IFPI-member companies are excluded from membership and governance of the society and cannot have royalties collected for them. While VOIS was created under existing legal statutes, its structure contradicts the provision in Part IV of the Civil Code, which states that all categories of rightsholders be represented.

16. (C) The USG has followed the volatile stops and starts of
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this issue since Russia committed in the 2006 IPR Side Letter (part of our bilateral agreement for Russia's WTO accession) to conduct tenders to accredit collecting societies in various categories. In January 2008, the Director of the Russian Phonographic Association (RPA - predecessor to RFA) was murdered in what IFPI believed to be an organized crime attempt to muscle RPA out of the royalty collection business (Ref A). Before the previous attempt to conduct the accreditation tender, in October 2008, a Moscow city police raid on RFA's offices raised concerns about the overall fairness and transparency of the tender process, and whether or not a rival collecting society was trying to hinder RFA's participation (Ref B). Such competition is not surprising given the large sums of money at stake. In fact, VOIS, as the now state-accredited collecting society, can anticipate collecting hundreds of millions of dollars in royalties, from which it will take a 30% cut as its fee.

7 (C) IFPI Russia Director Igor Pozhitkov was particularly angry with ROK's decision and believes that the selection of VOIS was the result of corruption and the close ties between the VOIS governing board, RAO, and former Minister of Culture Alexander Sokolov, all of which are closely connected to Prime Minister Putin. During a meeting with econoff, Pozhitkov stated that he believes that VOIS cannot be an independent representative of the interests of the U.S. recording industry because four of VOIS' board members are RAO representatives and four are "Sokolov's representatives."

(Note: We can also substantiate that RAO is directed by Sokolov. End Note) Pozhitkov also reported a rumor that the office of First Deputy Prime Minister Igor Shuvalov directed the accreditation committee chair, via Director of ROK Alexander Kibovsky, to make sure that "RAO (VOIS) got everything." For this year alone, "everything" could mean collecting upwards of \$7.2 million in royalties from the Russian Railways, for the rights to play songs on Russia's trains. We should also note that RAO also won the accreditation tenders for two other categories last year, (1) management of exclusive rights for the use of musical works in public performances and broadcasting and (2) management of copyrights for the use of musical works in public performances and broadcasting.

RFA's next steps

¶ 8. (C) According to Pozhitkov, RFA plans on writing a letter to ROK Director Kibovsky requesting the reasons for the rejection of RFA, and to ask how RFA's members can join VOIS given its legal representation limitations. It also plans on suing ROK, hopefully using ROK's response to RFA's letter to demonstrate that ROK did not adhere to the Civil Code Part IV provision in its selection of VOIS. While RFA does not believe the case will be successful, it hopes to use the process to "make public" its corruption accusations. At the same time, IFPI member companies are being invited to engage in a letter writing campaign to Kibovsky and First Deputy PM Shuvalov expressing their concerns regarding ROK's decision.

ROK - "The highest level of power approved"

¶ 9. (C) ROK, on the other hand, believes it made a selection that best supported the interests of songwriters and performers. Georgy Sytenko, head of the Legal Department of the Copyright and Neighboring Rights Unit of ROK, told embassy staff that in making its choice, the committee reviewed not only the capacity of the three applicants to perform their duties, but also their responsiveness to the committee's questions and concerns. He stated that from the committee's perspective, RFA, instead of answering the committee's questions regarding membership of individuals, just repeated its principal argument for choosing them - that VOIS cannot represent everyone like RFA. Sytenko noted that this is not altogether true because RFA is a non-commercial partnership that does not allow individuals to become members. He also asserted that the decision to accredit VOIS received approval "from the highest level of power" and was not to be discussed further.

Comment

¶ 10. (SBU) The challenge now will be for the international recording industry to find a way to work with VOIS to collect their royalties. Post continues to advocate for a collection regime that will provide a clear, transparent mechanism by

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which rightsholders, whether individuals, companies or other legal entities, can receive compensation for the use of products to which they hold title. Post plans to meet with ROK and will continue to follow up with IFPI to discuss possible options for rightsholders who are not individuals.

¶ 11. (C) Post does not plan to raise the issue of why RFA was not selected. During our conversations with Sytenko, he warned that the issue is not open for discussion. He told us point blank that if the question arises as to why RFA was not chosen, ROK "will forward a demarche via the Ministry of Foreign Affairs to the U.S. Embassy, indicating numerous USG attempts to bring pressure on the GOR and intervene in national policy." While Embassy disagrees with Sytenko's characterization of USG actions on this matter, at this point, we do not see any benefit to challenging the ROK decision. We need to find out how the interests of all types of rightsholders concerned can be satisfied within the system chosen by the ROK. If we, and the phonographic industry, cannot find a satisfactory way to work with VOIS, then we can work with relevant Washington agencies to develop an appropriate response. End comment.

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